IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4543 OF 2004

Smt. Rekha Kailash Zade ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mrs. Aniketa Aher-Sawant, for the Applicant.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

28th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant apprehends arrest in connection with offence registered as CR.No. 128/2004 with Barshi City Police Station. Even accepting the case against the Applicant as registered, all that is mentinoed is that she did not resist her husband from indulging in such heinous act. Merely because the Applicant did not resist the commission of offence does not

mean that she had common intention or she wanted to aid or abet commission of the said offence. Merely watching the incident can also be out of sheer shock and frustration. The learned A.P.P. submits that the Applicant can be proceeded against on the basis that she is involved in the offence by virtue of section 34 of the Indian Penal Code. I am not impressed by this submission. Besides, it is seen that the F.I.R. has been lodged after 4 days from the date of incident. Taking overall view of the matter, the Applicant deserves to be enlarged on anticipatory bail on the following conditions.

(a) The Applicant is enlarged on anticipatory bail in connection with CR.No. 128 of 2004 registered with Barshi City Police Station on executing personal bond in the sum of Rs.15,000/- with one or two local sureties in the like amount.

(b) The Applicant shall abide by the conditions mentioned in section 438(2) of the Cr.P.C., as applicable to the State of Maharashtra.

. Application disposed of accordingly.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)